

Frank J. Schroeder d/b/a National Apartment Leasing Company and Stephen J. Grochowski. Case 6-CA-13561

June 30, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER

On February 2, 1982, Administrative Law Judge J. Lee Benice issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings,¹ findings,² and conclusions³ of the Administrative Law Judge⁴ and to adopt his recommended Order, except as modified herein.⁵

The Administrative Law Judge concluded that Respondent did not violate Section 8(a)(1) of the Act when Supervisor Lentz told employee Grochowski that, if Respondent's employees selected union representation, it would fold and that he was afraid they all would lose their jobs. According to the Administrative Law Judge, Lentz merely expressed his personal feelings to Grochowski and had no intention of threatening him. The General Counsel seeks reversal of this finding. We agree that the Administrative Law Judge erred. We have consistently found remarks like those of Lentz to

violate the Act because they may reasonably be said to have a tendency to interfere with the free exercise of employee rights under the Act. Neither the speaker's intent nor the successful effect of such remarks on an employee is material. *El Rancho Market*, 235 NLRB 468, 471 (1978). Accordingly, we find that, by telling Grochowski that Respondent would fold and that everyone would lose their jobs if the organizing effort succeeded, Respondent violated Section 8(a)(1) of the Act.

AMENDED REMEDY

Having found that Respondent has engaged in unfair labor practices, we shall order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Since we have found that Respondent discharged Stephen Grochowski in violation of the Act, we shall order Respondent to offer him immediate and full reinstatement to his former position or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges. We shall further order Respondent to make him whole for any loss of earnings he may have suffered as a result of the discrimination against him by payment to him of the amount he normally would have earned from the date of his termination, April 28, 1980, with backpay to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as prescribed in *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962), and *Florida Steel Corporation*, 231 NLRB 651 (1977). Respondent shall also post a notice to employees, setting forth the aforementioned unfair labor practices and remedies.

On the basis of the foregoing findings of fact and the entire record in this case, we make the following:

AMENDED CONCLUSIONS OF LAW

Substitute the following for Conclusion of Law 5:

"5. By threatening Stephen Grochowski that Respondent would fold and that employees would lose their jobs if they selected union representation, Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act."

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent,

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² We do not adopt the Administrative Law Judge's comments in sec. III, A, 5, of his Decision concerning Respondent's motion to amend its answer at the hearing.

³ The Administrative Law Judge found that employee Stewart was possibly the source for Grochowski's comment that companies threaten to fold to keep unions out. The record contains no evidence of the source of this comment. Accordingly, we do not rely on this finding. This does not affect our decision herein.

⁴ In the absence of an allegation in the complaint and since the issue was not litigated, we do not adopt the Administrative Law Judge's suggestion that employee Stewart was discharged because of his union activities.

⁵ We find it will effectuate the purposes of the Act to require Respondent to expunge from Stephen J. Grochowski's personnel record, or other files, any reference to his unlawful discharge and notify him that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel action against him. We shall modify the Administrative Law Judge's recommended Order and notice accordingly. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982).

Frank J. Schroeder d/b/a National Apartment Leasing Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs accordingly:

"(a) Threatening employees that Respondent will fold and that employees will lose their jobs if they select union representation."

2. Insert the following as paragraph 3(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from Stephen J. Grochowski's personnel record, or other files, any reference to his discharge on April 28, 1980, and notify him in writing that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT interfere with, restrain, or coerce our employees in exercise of these rights.

WE WILL NOT interrogate our employees regarding their union activities, sympathies, or desires or those of other employees.

WE WILL NOT threaten our employees with closing our plant and loss of their jobs if they select union representation.

WE WILL NOT discharge or otherwise discriminate against our employees in regard to their hire or tenure of employment or any

terms or conditions of employment because they engage in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights to engage in or refrain from engaging in any or all of the activities specified in Section 7 of the Act.

WE WILL offer Stephen J. Grochowski immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent job, without prejudice to his seniority or other rights or privileges, and WE WILL make him whole for any loss of earnings he may have suffered as a result of his discharge, with interest.

WE WILL expunge from our files any references to the discharge of Stephen J. Grochowski on April 28, 1980, and WE WILL notify him that this has been done and that evidence of this unlawful discharge will not be used as a basis for future personnel actions against him.

FRANK J. SCHROEDER D/B/A NATIONAL APARTMENT LEASING COMPANY

DECISION

STATEMENT OF THE CASE

J. LEE BENICE, Administrative Law Judge: The charge in this case was filed on June 20, 1980, by Stephen J. Grochowski, an individual. On August 14, 1980, the complaint was issued alleging that Respondent violated Section 8(a)(3) of the National Labor Relations Act, as amended, herein called the Act, by discharging Grochowski for union activity. At the hearing, the complaint was amended to allege, further, that Respondent threatened one employee with discharge and interrogated another in violation of Section 8(a)(1). Respondent, in its answer, amended at the hearing, denies that it has committed any unfair labor practices.

Hearings were held before me in Pittsburgh, Pennsylvania, on March 2 and 3, 1981, and on April 6, 1981. Post-hearing briefs have been filed by Respondent and the General Counsel.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

1. THE BUSINESS OF RESPONDENT

Respondent is engaged in the management of apartments in Allegheny County, Pennsylvania. During a representative 12-month period, it derived gross revenues of more than \$1 million. During the same period, it purchased goods and materials valued in excess of \$5,000 from enterprises located within Pennsylvania, each of

which had obtained these from points outside of Pennsylvania. I find that Respondent is an employer engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

The Laborers' International Union of North America, Constructed General Laborers' Local 373, AFL-CIO, referred to in this Decision as Local 373, or as the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. In general

Stephen Grochowski was employed by Respondent National Apartment Leasing Company (NALCO) from December 3, 1979, through April 28, 1980, as a maintenance man, and as such was involved with inspecting and making required repairs in the six apartment buildings to which he was assigned. His immediate supervisor was John Davies, the maintenance supervisor. Above Davies was his wife, Linda Davies, the general manager, and above her was Frank Schroeder, the proprietor.

On Friday, April 25, 1980, dissatisfied with the size of a cost-of-living increase in his pay, and after a discussion with a fellow employee, Heinz Gruen, Grochowski contacted Adam Menosky of Local 373, who told him that the Union would be willing to represent the NALCO employees if a majority of them would support an organizing effort. Menosky suggested that Grochowski make discreet inquiries among his fellow employees to determine how many would support a union. That afternoon, Grochowski spoke again with Gruen and determined which employees should be contacted. Gruen, a member of the cleaning crew, agreed to contact those on his crew. Grochowski was to talk to his fellow maintenance employees.

Grochowski soon encountered Philip Lentz, a longtime NALCO employee¹ whom he regarded as a friend, and who, he thought, would be able to give him an accurate appraisal of the chances of getting a union. Grochowski expected encouragement from Lentz, but, to his surprise, Lentz became apprehensive. Lentz said that, if a union came in, the Company would fold, and Lentz was afraid that he would lose his job.² Grochowski respond-

ed by saying that, if a union could cause the Company to fold, he (Grochowski) had no right to jeopardize the employees' jobs. At this point, he appeared inclined to drop the entire idea of organizing the NALCO employees.

At the end of the day, Grochowski ran into fellow employee John Stewart, who indicated that he would vote for a union on a secret ballot but would outwardly claim to be against unions.

After work, Grochowski called Gruen and told him what he had learned. Gruen, who had already interviewed several members of the cleaning crew, expressed surprise at Lentz' reaction. Grochowski then told Gruen that he "found out" that the Company would always threaten to fold as a way of discouraging union organizing. Possibly he had heard this from Stewart.

On Monday morning, April 28, at 10 or 11 o'clock, Grochowski ran into Lentz again and told him that he no longer believed that the Company really would fold if it had a union. Lentz again expressed fear for his job,³ but Grochowski, having in mind Gruen's numerous contacts on the cleaning crew, indicated that the matter might already have gone so far that it was out of his hands. He left the impression that the organizing efforts were going forward.

At 2 o'clock, Grochowski was summoned to a meeting with John Davies, and was discharged. Davies said that Grochowski did not seem to fit in with what they were doing there and that they were going to let him go. Grochowski's response was to tell him not to worry about it, that he (Grochowski) knew what was going on. Davies asked him what he meant by that, but Grochowski said to never mind.⁴ Grochowski was terminated without finishing the day.

Lentz later told Heinz Gruen that Grochowski had been fired for union activity.⁵ Linda Davies later told John Stewart that Grochowski had left voluntarily. John Davies, at the time of the discharge, put his name on a memorandum in which he said that he thought that Grochowski had *wanted* to be fired so that he could collect unemployment compensation. At the hearing, however, Schroeder and Linda Davies testified that Grochowski was fired because he did not perform adequately and either could not or would not make the effort necessary to correct that situation.

ing and unconvincing, and were accompanied, at times, by glances suggesting lack of commitment to accuracy.

³ I credit Grochowski's account. Lentz has denied making such remarks in the April 25 conversation, not in this one. But, even if the intention in his testimony was to deny the April 28 remark as well, I do not find him to be a credible witness, for the reasons given in the previous footnote.

⁴ Grochowski, whom I find to be a credible witness, so testified. Although Davies did not include these remarks in his description of the conversation, his testimony did not rule them out, in my opinion. And to the extent that the testimony of these two witnesses may be incompatible, I found Grochowski to be the more convincing, by virtue of his demeanor on the stand.

⁵ On this point, I credit Gruen's testimony to that effect, and not the portion of Lentz' testimony which could be construed as a denial of the remark. Gruen impressed me as a credible witness. He was direct and straightforward in his answers, and his appearance was that of a person telling the truth. On the other hand, Lentz, as previously noted, was not a very credible witness.

¹ Lentz was the leader of the roofing crew, but, when weather conditions were unfavorable for roofing work, he functioned as one of the more highly skilled maintenance men. His alleged supervisory status is discussed elsewhere.

² Grochowski so testified. Lentz denied being apprehensive or expressing such concerns, but I credit Grochowski. Grochowski may have had a one-sided view of things, but, with that acknowledged, he was an otherwise believable witness whose bearing on the stand and whose manner of answering questions was convincing. I found him to be a very credible witness. Lentz, at the other extreme, was never convincing. His attitude toward the proceedings, the counsel for the General Counsel, and even the presiding officer was conspicuously overflowing with an annoyance which he appeared to be trying to display rather than suppress. His answers were sometimes evasive, often hesitant, frequently sounded grudge-

Respondent's witnesses presented oral and documentary evidence to show that Grochowski did not have sufficient basic knowledge of plumbing and forced-air furnaces, did not learn quickly, could not keep up with his assignments, did not have a positive attitude, and did not keep the exterior of his buildings acceptably clean. According to these witnesses, this caused problems for them and eventually led to the decision to remove him. Respondent contends, in effect, that no one in management was aware of Grochowski's organizing efforts, and that it was only by coincidence that he was fired at this particular time. Its witnesses testified that Lentz did not tell any of his superiors about Grochowski's union activities, and that they did not learn from any other source.

I do not accept Respondent's version of these events because, when considered along with all of the other facts and circumstances, this version seems improbable, and also because I simply did not believe the essential portions of the testimony of the individual witnesses for Respondent. An analysis of their testimony will show why I reach that conclusion.

2. The testimony of Respondent's witnesses

Frank Schroeder, the first of Respondent's witnesses, testified that in December 1979 and January and February 1980 he would see or talk to Grochowski about three times per week, and would monitor his progress almost daily, either through the work Grochowski was doing or from reports Schroeder was receiving. He would often send memos to his maintenance men on things that were not being done properly or on specialized matters. None of these memos—all of which Grochowski would have seen and could confirm or refute—was ever introduced or described, and none, however critical of Grochowski, was ever placed in the employee's personnel file.

According to Schroeder, he also gave Grochowski advice, at times, on heating problems, sometimes by memo and sometimes in person, whenever he heard that Grochowski was having a particular problem. However, not one of the incidents was described by the witness, and none of the memos was introduced. None were in Grochowski's personnel file; no matter how revealing they might have been of any of Grochowski's alleged shortcomings. Here again, the incident or memo would be of a type that Grochowski could confirm or refute. Instead, what Respondent did introduce through Schroeder was a collection of altogether different memos, the authenticity of which is questioned by the General Counsel, none of which memos would ever have been seen by Grochowski or by anyone outside of Respondent's inner circle of management, but copies of all of which were said to have been placed in Grochowski's permanent file.

With these self-serving memorandums to confirm his words, Schroeder testified, first, that he had, in January and February, in two of the memos, evinced a concern about Grochowski's lack of knowledge concerning plumbing, boilers, and forced-air furnaces, to which memos John Davies had replied in January by indicating that he would spend some time with Grochowski, and in February by saying, "Let's give it a little more time." Schroeder stated that the memo concerning plumbing

was prompted in part by reports to him that Grochowski was having problems on the witness stand.

Aside from the question of Grochowski's skill with plumbing and furnaces, Schroeder testified that there were continuing problems, consisting of tenant complaints and repeated requests by tenants for correction of the same problems, and shortcomings in Grochowski's cleaning up around his buildings on his morning inspection. Again, he gave no specific examples. He testified that on April 2 he sent a memo (Resp. Exh. 7) to John Davies, indicating that Grochowski did not seem to be working out, did not have the necessary basic knowledge, did not seem to be able to grasp the work, and was not the kind of self-motivated person Respondent needed in that job to solve the maintenance problems. Davies' reply, handwritten on the memo, indicates that Grochowski did not work well with the other men,⁶ and needed Davies' constant assistance. Davies' reply also questioned whether it would work out, but said he would spend some more time with Grochowski, and that Respondent should give it until the end of the month.

Schroeder testified that during the week of April 13 he held a meeting with Linda and John Davies concerning Grochowski and his problems and decided that Respondent would have John talk to Steve one last time, hopefully quickly, to see how he felt, and that, if he seemed willing to try to improve, to keep him; otherwise to lay him off. Schroeder then stated for the first time that Grochowski had attitude problems and had been *unwilling* to improve. Schroeder testified that the following week there came a memorandum from him to John Davies, stating that he agreed with what John and Linda had said to the effect that Grochowski just was not working out and that they should try to resolve the matter by the end of the month, and instructing John Davies to have one more talk with Grochowski, and, if no success, to lay him off.

A certain amount of pretense can occur in a memo written merely to record a meeting, but, even so, the wording with which Schroeder recapitulates this meeting seems unnatural.⁷ And I am struck with how very natural the same language would seem if it had been said to have been written instead by someone unaware that there had been a meeting. Ultimately, of course, this would imply that the meeting itself was fictitious, and the memos false. While I am unwilling to rest so heavy a

⁶ This was never explained. Grochowski apparently worked alone most of the time.

⁷ Its tone and form, oddly, are not as if the memo had been written to memorialize the conference for the benefit of Grochowski's file or to remind John Davies to follow through (the only worthwhile purposes I can think of for the memo) but instead speak as if Schroeder were thinking the matter through for the first time, and then abruptly struck on a good idea:

... Why don't you have one more talk with him. If no success, lay him off.

Indeed, a person unaware of the testimony about a meeting could conclude from a reading of the memo that there had not been a meeting at all, and that Schroeder had spoken to John and Linda separately:

After talking to both you and Linda, I agree that Steve just isn't working out. I also agree [with your previous memo] that we should try to resolve by the end of the month. Why don't you have one more talk with him. If no success, lay him off.

finding entirely on so slender a reed, neither am I willing to pass by the language of this memorandum without mention of my observation.

Schroeder testified further that early on Monday morning, April 28, he got after John Davies to take care of the Grochowski matter, which Davies had not yet resolved, and to take care of it promptly. He claims that he wanted to clean up this loose end before the end of the month because it also was, in a sense, the end of their "employment year." But the "employment year" has very little significance⁸ and, when questioned, Schroeder conceded that it really did not matter very much. Yet John Davies later testified that Schroeder was really upset on that Monday when he gave Davies instructions to resolve the Grochowski matter. Curiously, Davies still had 3 full days left in which to meet the requirement, supposedly set down at the meeting, of an end-of-month resolution of the situation; and, with Schroeder's acknowledgement that the April 30 date was of limited significance anyway, the likelihood that something more serious and pressing than a mere loose end (and, at that, one not yet overdue for resolution) was troubling Schroeder so greatly must be considered.

Schroeder testified further that, after Davies spoke to Grochowski, Schroeder received a memorandum from Davies stating that Grochowski had not been receptive; had said that he did not like the work, and hated the winter weather; was thinking of quitting and going back to California; and, when fired, seemed relieved. The Davies' memo concludes that Grochowski was probably delighted to be fired so that he could collect unemployment compensation (presumably in Pennsylvania, where the winter weather was so bad).

Linda Davies, in her testimony, expanded upon the contention advanced by Schroeder that Grochowski's performance in certain areas was deficient. She testified that later in March it came to her attention that Grochowski was not keeping the exterior of the buildings, particularly one building called the Tamarind, clear of trash, as he was supposed to, and not replacing all light bulbs. According to her testimony, she complained by memo to her husband, whose reply indicated that he would speak to Steve and try to work it out. She felt that this memo was necessary because when she spoke to Grochowski about it, his response was that he was not a janitor. Grochowski denied making that remark, and he and Gruen also have complete explanations for the presence of the trash and debris around the Tamarind, through no fault of Grochowski and due to causes known to the management. And their testimony stood un rebutted.

Linda Davies testified that after months of listening to the complaints of tenants and rental agents about the condition and appearance of Grochowski's buildings, and with no sign that Grochowski's was going to improve, she decided, in approximately mid-April, that she did not

want Grochowski to remain with NALCO. According to her testimony, she expressed these feelings to John Davies and Frank Schroeder, and this led to the April meeting at which everyone agreed that John would have a final talk with Grochowski and that, unless he got a very favorable response, Grochowski would be fired. As before, there were no outside witnesses to any of these conversations and memorandums.

According to Linda Davies, she first became aware, in early January, that Grochowski's handling of tenants' requests for maintenance services was deficient, and, by the end of January, tenants' complaints relating to these failures became more serious. By the third week of February, she had talked to several angry tenants about his failure to make repairs promptly, and she reacted by sending a memorandum to John Davies, who replied that he was working with Grochowski and would have to help him catch up.

She testified further that she had a few conversations with Steve, one brief one in particular that she could recall in late February or early March in which she talked to him about his not fixing things on the first try and told him that when he had a problem he could not solve he should ask for help rather than let it go uncorrected.

To make her point, Linda Davies presented a number of illustrative examples of poor repair work, using copies of "service requests." These are tenants' requests for service, noted on index cards given to the maintenance man. He makes a notation on the back of the card describing the action he has taken and giving the date of the repair.

These service requests placed in evidence show a total of only nine of the service calls answered by Grochowski during his last 3 months on the job. In every case, according to these documents which were selected by Respondent for a different purpose, the work was completed promptly.

Considering the large number of failures alleged by the witness, and considering her familiarity with, and free access to, these records, she presented what will be seen as surprisingly few examples. But even more striking than the paucity of examples that she presented was the fact that the illustrative examples she handpicked are surprisingly unsupportive of her (and Respondent's) assertions.

To begin with, the nine service requests are given to illustrate only four instances wherein Stephen Grochowski allegedly fail to handle maintenance problems correctly on the first attempt. Only one instance even involved more than one "callback." And the examples are not convincing examples of a deep-seated or chronic problem, as will be seen:

In the first set of examples, Grochowski apparently repaired a dishwasher correctly on the first try, but was called twice more because the tenant continued to complain that the furnace was intermittently blowing cold air. Each time, Grochowski made some minor correction and found that furnace to be working correctly when he left. On the fourth call from the tenant, John Davies was asked to handle it personally. He noted on the card that

⁸ Cost-of-living raises are given to employees in May, and the tenant's leases mostly run from May 1 to April 30. Otherwise, Respondent had no other explanation for calling this an "employment year" or attributing much significance to it or to whether or not Grochowski worked past April 30. Respondent operated on a calendar year for all tax and fiscal purposes.

he had changed a clogged filter and that he too found the furnace to be working correctly when he left. No one asked the witness whether the tenant ever called again.

Assuming that a furnace with a clogged filter would blow air freely but that the air would somehow turn cold, three more matters still trouble me about this bit of evidence. One is that after all the special attention that Respondent claims was given to Grochowski on the subject of forced-air furnaces,⁹ it seems unlikely that anyone, no matter how inept, would not have been successfully trained to look at the filter. Another troubling matter is that an operation as sizeable and well organized as NALCO's would not have systematically replaced furnace filters before they became so clogged that the furnaces somehow blew that cold air and required individual attention. And there is some evidence that they did indeed replace them systematically. Heinz Gruen testified, without contradiction, that he had been assigned some seemingly systematic replacing of furnace filters in the very building in question. The third troublesome point is that Grochowski's contemporaneous notation on the service request card showed that another employee had checked the furnace with him and apparently had agreed with him that it was functioning correctly when they left.

At this point, it should be noted that there is convincing un rebutted testimony by John Stewart (which I credit) to the effect that the furnaces serving that building (the Village Square Apartments) had been troublesome for some time, and that, no longer after Grochowski left NALCO, they were all rewired. Yet Linda Davies, in charge of NALCO's day-to-day operations, had previously testified that she was unaware of any problems with these furnaces. This affects her credibility generally, because a problem so chronic and widespread was unlikely to have escaped her attention altogether.

In the second set of examples chosen by Linda Davies, Grochowski caulked a bathtub to correct a leak and was called back 2 months later because of the same kind of leak, and caulked the tub again.

In this third set of examples, a tenant complained that (what apparently was) a casement window, once opened, would not close again. Grochowski found that the arm was out of its track and repositioned it. The tenant complained again 6 days later that it still did not work correctly. Grochowski could find no specific defect, but he tightened the mechanism, and there is no evidence that the tenant ever called again.

In the fourth and last set of examples, a tenant complained that a hot water tank was leaking badly. Grochowski repaired the leak that day, and the tenant apparently never complained again about a leak in the hot water heater. However, 3 days later, the tenant complained that the heater was not on. Grochowski relighted the pilot and set it a little lower. There is no evidence of a further problem with this hot water heater.

The foregoing is Respondent's entire showing to illustrate 4 months of alleged incompetent work featuring so

large a number of callbacks as to create a serious problem. I am unable to share the conclusion urged by Respondent. Instead it appears that, with a written record of every piece of work Grochowski did, and with so much incentive to prove that Grochowski was incompetent, Respondent was unable to come up with a convincing set of examples.

3. The testimony of John Davies

As the hearing progressed, it became increasingly obvious that John Davies would be a pivotal witness. He was the person who best knew Grochowski's shortcomings, if any, and who even alluded to some of them in the challenged memorandums. He could have told, with firsthand knowledge, all about Grochowski's workmanship and attitude on the job. As the person whose writing appeared on the challenged memorandums responding to Frank Schroeder's and Linda Davies' complaints about Grochowski and saying that he would talk to Grochowski and work with him, he was the one person who could tell what, if anything, was then done with Grochowski to correct all of these alleged shortcomings, if indeed, there were such shortcomings, and if, indeed, there were meaningful attempts to correct them. He could also have told, first hand, how Grochowski responded to these efforts. He was the person who might have refuted Grochowski's statements to the effect that Grochowski was not ever warned or severely criticized concerning the quality of his work, or ever given any reason to believe that his job was insecure. In sum, being the person who worked with Grochowski and saw his problems, and gave him most of whatever advice, assistance, counseling, criticisms, and warnings that Grochowski might have received at NALCO, he was the logical witness to provide the heart of the evidence about any of Grochowski's inadequacies and about what, if anything, was done about them.

John Davies was also the person most familiar with the furnaces at the Village Square apartment building, the person who could have not only confirmed and explained the clogged filter incident but also could have disputed John Stewart's testimony concerning the inadequacies of the furnaces that Grochowski was working with. Thus he could have justified Linda Davies' otherwise seemingly incredible unawareness of any large scale furnace problem that produced heating problems and eventually required the rewiring of every one of the many individual apartment furnaces in the Village Square apartment building.

He was the logical witness to confirm the handwritten notations bearing his initials on the above-discussed memorandums and the events behind them. He was an important witness to the questionable mid-April meeting at which, Respondent contends, it was decided to give Grochowski until the end of the month. Logically, he could have been expected to confirm resoundingly the testimony of his bosses, Frank Schroeder and Linda Davies, about that meeting.

He could have been called to explain away the never adequately explained firing of John Stewart, who, as will be noted elsewhere, had confessed to Linda Davies that

⁹ As previously noted, it was testified that Steve did not know much about forced-air furnaces and that Schroeder and Davies spent extra time teaching him.

he was a former union organizer who had been involved with Grochowski to a very minor degree, in the unsuccessful organizing effort. And finally, as the person closest to Phil Lentz in the NALCO chain of command, Davies would have been a logical, although not essential, witness to further clarify Lentz' supervisory authority or lack of thereof.

Eventually, Davies did testify, but not about any of these things. Basically, he was asked only about some of the events of Grochowski's last day. Concerning the events of the last day, Davies testified only that he met with Frank Schroeder early on Monday morning, April 28; that Schroeder was upset and insisted that Davies resolve the Grochowski matter more quickly; and that Davies talked to Grochowski, who seemed only lukewarm toward his job and seemed relieved after he was fired.

4. Respondent's attitude toward unions—and the interrogation of John Stewart

On one occasion even before Grochowski joined the Company, Schroeder, in an unsolicited response to a remark he overheard, said, in front of a group of employees, that "union talk is a good way to find yourself out on the street."¹⁰ On another occasion, when Gruen told his supervisor, Frank Mariewicz, that the place needed a union, the supervisor told him that, if he mentioned the Union, his butt would be out in the street. Two to 3 days later, he was relieved of his duties as a carpenter and put on the cleaning crew, where, despite his protests, he remained. Respondent has not explained this on the record.

Philip Lentz once told Grochowski that NALCO had once had a union at one of the apartment buildings, but that the Company had gotten the union out somehow. And, as previously noted, Lentz, at the time Grochowski was fired, said that it was for union activity.

Schroeder denies making any antiunion threats, and, in any event, claims that he knew better than to fire an employee for attempting to organize. Schroeder points to the fact that he has retained two apparently passive dues-paying union members whom he apparently acquired along with an apartment development at which there had once been an active union. He also describes negotiations he conducted with that union (negotiations which led nowhere) and states that the union representative simply failed to return, and that the union was never heard from again. This may well be the same union that Lentz later referred to, in his talks with Grochowski, as the one Schroeder had gotten rid of.

Regardless of Schroeder's attitude about unions while he is appearing at a National Labor Relations Board hearing, however, the word passed to employees by the supervisory staff is that unions are not wanted at NALCO, and that union activity is hazardous to one's

continued employment. Such remarks by supervisors are likely to reflect company attitude more accurately than is the self-serving testimony of the proprietor on the stand while facing charges. And NALCO's actions speak even louder than the words of its supervisors. In addition to the demotion of Heinz Gruen, apparently for mere talk of a union, there is the following example of the interrogation and firing of John Stewart.

As previously noted, Grochowski filed the charge in this case on June 20, 1980. On or about June 23, NALCO received notice of the charge. Two or 3 weeks later, Linda Davies called John Stewart into her office and questioned him, not about the charge, but about Grochowski's organizing attempt.¹¹ Stewart was the only person she called in this manner and the only employee to whom she spoke about the organizing efforts, except for Lentz and her husband. She claims to have selected Stewart because he worked near her office. Coincidentally or not, Stewart was also the only employee then remaining with the Company (except for Lentz, of course) who had talked with Grochowski about a union. Stewart recalls her asking whether he had known what was going on and whether he had talked to Grochowski about the Union. Mrs. Davies admittedly asked if he knew anything about any union activities and learned from him that, if it came to a vote, he would vote for a union, and that he himself had once been a union organizer.

On January 6, 1981, amid full assurance that his work had been fine, and that they liked him, John Stewart was summarily discharged by John Davies, for no obvious reason, and with only the most meaningless of explanations. Davies said only that it would be best for the Company and best for Stewart himself if he were fired. Even when Stewart pressed him for specifics, Davies would not elaborate or make sense out of the remark, but merely repeated himself. And Respondent made no attempt at the hearing to explain the firing of John Stewart and thus to counter the obvious inference that the firing was based on the information Stewart revealed during the interrogation.

5. The supervisory status of Philip Lentz and his actions after learning about the Union

Lentz was the designated leader of the roofing crew, which usually numbers four or five. He interviewed and screened all potential members of his crew, and recommended the hiring of those he wanted, after which the front office checked further on the qualifications of only those recommended, and occasionally learned something which would disqualify one of the recommended candidates. Otherwise, management generally accepted his recommendations. On the job, he told the individuals what to do, and explained how to do it if the individual did not already know. Generally, no higher ranking person was present, other than momentarily, while the crew was working. Although he did not decide what job would next be assigned to the crew as a whole, he did

¹⁰ Gruen so testified, and I credit his testimony. Gruen was a very credible witness. He looked and sounded more convincing than Schroeder, had no apparent stake in the outcome of the proceeding, and was more definite and committed in his testimony on this point, recalling an entire incident in detail, while Schroeder's testimony was limited to a denial couched in terms of the unlikelihood of his saying anything so foolish.

¹¹ On the stand, she could not recall whether she asked Stewart anything about the charges filed by Grochowski.

decide how the work would be accomplished. On July 16, before the significance of his words became apparent, Lentz stated under oath that Schroeder had authorized him to advertise for, interview, and hire his own roofing crew, subject only to a reference check by the office staff.

Respondent, on August 25, in its answer to the complaint filed by the General Counsel, in this proceeding, admitted the allegation that Lentz held a supervisory position. Presumably this admission could have only have been made after consultation with Respondent, and apparently it was done before the significance of the supervisory question became apparent. Respondent later asked for leave to amend the answer, but only after the course of events at the hearing had already made it obvious that the admission was interfering with Respondent's defense. Similarly, Lentz later revised his interpretation of his responsibilities, but only after the significance of the supervisory issue was apparent. I am inclined to believe the story of Lentz told before he or Respondent realized the significance of his words.

I conclude that because, in addition to running the roofing crew, he exercised the power effectively to recommend the hiring of the members of his roofing crew, Lentz was a supervisor within the meaning of the Act. As such, his knowledge of the organizing campaign could reasonably be imputed to his superiors in the Company, under all of the circumstances. And his superiors fired Grochowski almost immediately after Lentz learned of Grochowski's union activity. However, even without a finding that Lentz was a supervisor, it seems probable that he saw to it that Schroeder was informed of the threat of union organization, because he was fairly close to management and seemed to be genuinely afraid that he would lose his job if Grochowski's organizing effort succeeded; and, in view of all the circumstances, it is also probable that Schroeder responded by giving John Davies immediate instructions calculated to lead to Grochowski's dismissal.

It is also interesting to note that Lentz did not ever expressly deny voicing fear for his job during his conversation with Grochowski on Monday, April 28, and that he did not expressly deny reporting *that* conversation to the management. He was never asked about *that* day's conversation with Grochowski. The only questions (and his only denials) concerned the earlier conversation which actually took place on April 25 but which was incorrectly identified by counsel as taking place on April 21.

B. Concluding Findings—Interrogation

The un rebutted testimony of witness Linda Davies and John Stewart make it abundantly clear that Davies questioned Stewart improperly in what appeared to be an attempt to root out any remaining risk that the Union might organize the Company. She interrogated him concerning who else had been involved in the unionizing, presumably so that NALCO could protect itself against any further effort to organize the Company. But whatever her motives might have been, such interrogation is inherently intimidating, and, as such, is a blatant violation of Section 8(a)(1). The fact that Davies used a friendly manner, and the fact that she got no other

names from Stewart (because there were others) cannot absolve Respondent. And the subsequent unexplained firing of Stewart, who confessed to being a one-time union organizer and a person somewhat involved with Grochowski's efforts to unionize NALCO, only serves to emphasize the unlawful character of the interrogation. Under the circumstances, the fact that Stewart did not lie to Davies about these matters in order to protect his job appears not so much as evidence of the propriety of the interrogation but rather as an indication of miscalculation on Stewart's part.

C. Concluding Findings—Remaining Issues

Lentz' remarks to Grochowski about the likelihood of everyone losing his job if the organizing effort succeeded were clearly designed to discourage union activity, but apprehensive reaction convinces me that these words were not intended as threats made on behalf of management, as the General Counsel alleges, but were merely his personal evaluation of a situation which genuinely frightened him. Thus, the remarks did not violate Section 8(a)(1) of the Act.

Indeed, I find that Lentz was sufficiently fearful of the possible loss of his job if the Company were unionized that he did the one thing that seemed best calculated to nip this threat in the bud. He warned Schroeder, who reacted by firing Grochowski.

Respondent would have the Board believe that Grochowski was an unsatisfactory employee due to be fired at or about this time anyway, and that it was the merest coincidence that he came to be fired just after he had begun to organize the Company on behalf of the Union and just after he had told Phil Lentz, a low-level supervisor, about it. The evidence, however, does not support any of Respondent's factual contentions. Grochowski was not shown to be so unsatisfactorily an employee. As noted, when Grochowski testified that he had not been criticized, cautioned, warned, or otherwise put on notice that his work was unsatisfactory, John Davies was not called upon to rebut those statements. Because of this, and because I found Grochowski to be a credible witness, and because I found all of Respondent's witnesses to be far less credible, I find that Grochowski was never seriously criticized in a way that would suggest to him that his job was in any way at risk. Nor was it proven, as alleged, that this work was unsatisfactory. The handful of poor examples selected by Respondent indicates instead that not very much was going wrong.

The Company has been shown to be antiunion. And Lentz had every incentive to inform management about Grochowski's activities. Indeed, as many of Respondent's factual assertions seem to fail under analysis, the picture emerges of a company firing this employee instantly, and later attempting to fabricate a defense as best it could.

It would, of course, be possible to make explanations for Linda Davies' professed ignorance of the furnace problems at the Village Square Apartments; for her stretching a point or two about the trash problem at the Tamarind; for Schroeder's being upset on that Monday morning; for the furnace filter testimony; for Lentz' repudiation of his sworn statement, for the unlikely testi-

mony of Lentz to the effect that he elected, in effect, to help Grochowski (at the risk of Lentz' own job) by keeping silent about the fact that the Company was being organized; for the apparent exaggeration of Grochowski's shortcomings and the lack of solid specific evidence about them; for John Davies' failure to rebut any of the testimony of the General Counsel's witnesses so damaging to Respondent's theory of the case; and for the extraordinary coincidence of Grochowski's being fired at the precise moment that he became a threat to the Company's antiunion policy. But taking such an approach would require too many explanations, rationalizations, or excuses, while the contrary view needs none of that. The testimony of the General Counsel's witnesses is straightforward and makes sense. The probabilities lie with Grochowski's having been fired because of his union activities, and with Schroeder then having orchestrated the development of Respondent's testimony after receiving notice of the charges filed against him.

I find, therefore, that Grochowski was fired because of his efforts to organize NALCO on behalf of the Union. This violated Section 8(a)(3) of the Act.

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Laborer's International Union of North America, Construction General Laborers' Local 373, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating an employee, John Stewart, concerning the union activities and sympathies of himself and others, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

4. By discharging Stephen Grochowski because of his activities on behalf of the Union, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and 2(6) and (7) of the Act.

5. Respondent has not been shown to have violated the Act in the remarks of Philip Lentz to Stephen Grochowski.

Upon the foregoing findings of fact and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER¹²

The Respondent, Frank J. Schroeder d/b/a National Apartment Leasing Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from interrogating employees about their union sympathies, desires, or activities, or those of other employees.

2. Cease and desist from:

(a) Discharging or otherwise discriminating against employees in regard to their hire or tenure of employment because they engaged in activities protected by Section 7 of the National Labor Relations Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their right to engage in or refrain from engaging in any and all of the activities specified in Section 7 of the Act.

3. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Offer Stephen Grochowski immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered as a result of his discharge in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to a determination of compliance with paragraph (a) above.

(c) Post at its Pittsburgh, Pennsylvania, place of business copies of the attached notice marked "Appendix."¹³ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps have been taking to comply herewith.

¹² In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

¹³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."